



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Eau Claire County Department of Human Services, Petitioner

vs.

DECISION

Case #: FOF - 158562

██████████, Respondent

Pursuant to petition filed June 25, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Eau Claire County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, August 21, 2014 at 09:15 AM, at Menomonie, Wisconsin.

The issue for determination is whether the respondent intentionally violated the rules of the FoodShare program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Michael O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Dunn County who renewed her FS benefits in Dunn as of May 1, 2014.
2. When the petitioner renewed her FoodShare on May 2, 2014, she reported that she and her three children lived in the household. She did not report that the father of two of her children was in the household.

3. The father of two of her children was in her household when she renewed her benefits.
4. On July 1, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that she failed to report that the father of two of her children was living with her.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

The agency can prove an intentional program violation (IPV) can by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. Only the individual found to have committed the violation can be disqualified; the remaining household members are not disqualified. Those who intentionally violate the FoodShare program's rules are ineligible for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

To establish that an FoodShare recipient has committed an IPV, the agency must prove by clear and convincing evidence both that she committed and that she intended to commit a program violation under 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction that each of the two elements exists even though there may be a reasonable doubt that the opposite is true.

In order to prove the second element, intention, the agency must present clear and convincing evidence that the recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). A person is presumed to know and intend the probable and natural consequences of her voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the recipient knew that the act or omission was a violation of the FoodShare rules but committed the violation anyway.

The respondent renewed her FoodShare on May 2, 2014. When doing so, she reported that [REDACTED], the father of two of her three children, was not in the household. The agency investigated and determined that [REDACTED] had told child support on March 20, 2014, that his address was the same as the respondent’s address and that he was receiving his mail there. The respondent admits that she also told a child support worker that [REDACTED] had moved in with her. [REDACTED] [REDACTED], of the county agency’s fraud unit, contacted her in May 2014 after she renewed her benefits. She told him that [REDACTED] had moved into her home on April 25, 2014. After discussing the matter with Mr. [REDACTED], she admitted intentionally violating the FoodShare rules and said she would submit a written waiver of her right to a hearing. She did not return the waiver and now challenges the allegations, claiming that [REDACTED] did not move in until May 2014 and that she had merely let him use her address for child support and to receive his mail before then. I will assume that when she claims he moved into her house in May that she is claiming that this happened after she filed her renewal on May 2, 2014. If this is not so, there is no reason to consider her assertion because that assertion rests on the assumption that when she completed her renewal he was not yet in the household.

The respondent testified that she first remembered that [REDACTED] did not move in until May after talking with him. He did not testify or submit any statement, and she did not provide any evidence that he moved in May other than her own testimony. This means that her assertion rests upon her credibility and the assertion’s plausibility. She blames her error on the death of a relative, after which she was “not” in her “right state of mind.” When, I asked her whether she told the child support worker that [REDACTED] was actually living with her rather than just using her address, she answered, “Yeah,” but explained that she did so only because “I didn’t know what he told her.” Although this statement is likely false, the casualness with which she was ready to lie when it suited her purposes displays a comfort with fabrication missing in honest people. And while I understand that the death of someone close can interfere with one’s ability to think clearly, the respondent’s revised story is implausible.

One of two things occurred here. The first is that the respondent is lying now, and [REDACTED] moved in with her before May 2014. The second is that she was lying to the child support worker and Mr. [REDACTED] when she said that [REDACTED] had moved in before May. The evidence strongly supports that the first is what happened. Her statement to Mr. [REDACTED] concerning when [REDACTED] moved in provided a specific date. Although this date is different than the one [REDACTED] provided to the child support office, its specificity indicates that she was not providing a rough estimate. In addition, she talked to Mr. [REDACTED] in May, so she made her statement within about a month of the April 25 date she stated that [REDACTED] moved in. Because the statement and alleged date [REDACTED] moved in are so close, her recollection should have been fresh. If he had moved into her house in May, as she now asserts, it would mean that she gave Mr. [REDACTED] an incorrect date about something that occurred in the previous two or three weeks. When talking to Mr. [REDACTED], she admitted that she intentionally violated the FoodShare program’s rules, which is consistent with her statement that he had moved in before she completed her renewal. The first time she ever

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of September, 2014

\sMichael O'Brien
Administrative Law Judge
Division of Hearings and Appeals

c: Great Rivers Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] [REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 3, 2014.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@co.eau-claire.wi.us